THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.9683 of 2007

DATE: 22.11.2007

Between:

Sreepangi Maheswara Rao and another

....Petitioners

and

Recovery Officer, Debt Recovery Tribunal,
Hyderabad and another

....Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.9683 of 2007

ORDER:

Heard Sri Jalli Kanakaiah, counsel representing the writ petitioners and Sri Narayana Reddy, learned Standing Counsel representing respondent No.2.

2. The writ petition is filed for a writ of mandamus declaring the auction notice issued by the 1st respondent dated 27.03.2007 published in Andhra Jyothi Telugu Daily Newspaper, dated 01.04.2007 in respect of land to an extent of Ac.9.03 guntas in Sy.No.107 situated at Chinchoda Village, Shadnagar Taluk, Mahaboobnagar District, belonging to the petitioners as arbitrary, illegal, violative of principles of natural justice contrary to law and consequently direct the respondents to drop further action in the matter in the interest of justice.

3. It is stated by the petitioners that they purchased the agricultural land to an extent of Ac.9.03 guntas in Survey No.107 situated at Chinchoda Village, Farooqnagar Mandal, Mahaboobnagar District from one Smt. D.Sandhya Rani and 3 others for a valid consideration under Registered Sale Deed (Document No.7926/2004, dated 31st

December, 2004. Thereafter, their names were mutated in the concerned revenue records on
19-04-2005 by the Mandal Revenue Officer, Farooqnagar, vide Proceedings No.B.1560/2005. It is submitted that they have been in possession and enjoyment of the said land right from the date of purchase i.e. 31-12-2004 till date.

4. It is also stated that while things stood thus, the petitioners came to know very recently that the land in their possession to an extent of Ac.9.03 guntas in Sy.No.107 situated at Chinchoda Village, Shadnagar Taluk, Mahaboobnagar was put to auction on 14-05-2007 through a notification, dated 27-3-2007, issued by the 1st respondent published in daily newspaper, dated 1-4-2007. It is submitted that as per the said notification, the said lands are sought to be auctioned for recovery of Rs.40,00,000/- said to be due from M/s.S.V.Textiles and others towards the debt raised from the State Bank of Inida, Narayanaguda Branch, Hyderabad. On coming to know of the same, they had enquired into the matter and came to know that the State Bank of India has filed O.A.No.709/1999 on the file of the Debt Recovery Tribunal, Hyderabad, obtained a decree against M/s.S.V.Textiles and others, filed execution proceedings – R.P.No.507/2001 and obtained an order for conduct of auction of the said lands.

5. Further, it is stated that the petitioners are not parties to the said O.A.No.709/1999 or parties to the said R.P.No.507/2001 and there is no decree or order obtained by the State Bank of India against them in respect of the said land and even assuming that the State Bank of India is having any right to recover the amounts from S.V.Textiles or the sureties therein, without any notice to them who are in actual

possession and enjoyment of the said land with perfect title as could be seen from the Registered Sale Deed, dated 31-12-2004 coupled with the mutation proceedings issued by the competent authority viz., Mandal Revenue Officer, Farooqnagar, the said lands cannot be put to auction. In fact, on coming to know of the same, they tried to make an objection before the concerned Recovery Officer with regard to conduct of sale in respect of their land as they are nothing to do with the loan transaction if any, in between the S.B.I. and said M/s.S.V.Textiles or sureties thereon. But, the 1st respondent refused to receive any objection from them and trying to proceed with the auction scheduled to be held on 14-5-2007 as per the auction notice, dated 1-4-2007 published in Andhra Jyothi Daily Newspaper. It is also stated that the subject land, which they purchased from one Smt. D.Sandhya Rani and three others, who are the legal heirs of one Mr.D.Narsinga Rao, who being original pattedar and who died as early as on 13-10-2004, is not under mortgage to the State Bank of India and that is the reason why, they purchased the said property and the registration was effected by the concerned registration authorities and basing on which mutation was also effected by the concerned revenue officials in their favour. As such, it is evident that the said lands are not a mortgaged property. As per the Encumbrance Certificate issued by the concerned official, dated 19th February, 2007, there are no charges in respect of the said lands for the period from 1-1-1983 to 2-12-2004 and thereafter till date. As mentioned already, right from 31-12-2004, they became the absolute owners and possessors of the said land having purchased the same for valid consideration under registered document. Hence, without any notice to them and without making them as parties to any proceedings, the respondents cannot proceed with the auction pursuant to notification, dated 1-4-2007, either on 14-

5-2007 or subsequently. Had there been a physical verification of the property, the respondents would have noticed that the said lands are in their exclusive possession and enjoyment right from 31-12-2004 onwards. In any event, the respondents cannot proceed with the proposed auction when the subject lands are not at all mortgaged in favour of the 2nd respondent bank either by the petitioners herein or by their vendors. Hence, there is no justification on the part of the respondents in proceeding with the auction of the subject lands in pursuance of the said order made in R.P.No.507/2001 in O.A.No.709/1999 to which either themselves or their vendors are not at all parties. Had there been a notice issued to them, they would have placed relevant material to establish their title over the property. Hence, the said action of the respondents pursuant to the auction notice, dated 1-4-2007, is violative of basic principles of natural justice and the same is liable to be set aside. The respondents are now proceeding with the auction on 14-5-2007 and if that is allowed to be proceeded with, they suffer irreparable loss and injury.

6. In the counter-affidavit filed by the second respondent, it is stated that the writ petition itself is not maintainable in view of the alternative remedy provided under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Rules framed thereunder. It is also stated that the State Bank of India, Narayanaguda Branch, Hyderabad advanced working capital loan facilities of Rs.9,60,000/- to M/s.S.V.Textiles Private Limited and the said company availed the loan facilities after executing security documents on 09.09.1988 and also furnishing personal guarantees of Sri M.A.Sampath Kumar, Sri S.Raghu, Sri D.Narsinga Rao and Sri S.Bhaskar Rao. Sri D.Narsinga Rao also created equitable mortgage on 09.09.1988 over his

immovable property Ac.9-03 guntas in Survey No.107 AD, situated at Chinchodu Village, Mahabubnagar District as security for the loan facilities sanctioned to M/s.S.V.Textiles Private Limited. Further, it is stated that as M/s.S.V.Textiles Private Limited committed default in repaying the loan amount to the bank, the bank filed O.S.No.65 of 1991 on 27.03.1991 against the said company and its guarantors/mortgagers before the Subordinate Judge, Mahabubnagar for recovery of a sum of Rs.11,32,999.20 ps., together with future interest and costs. After constitution of the Hon'ble Debts Recovery Tribunal at Bangalore, the said suit was transferred and renumbered as O.A.No.298/1997 and later on the matter was again transferred to the Hon'ble Debts Recovery Tribunal at Hyderabad and renumbered as O.A.No.709/1999. After trial in the said O.A.No.709/1999, the Hon'ble Debts Recovery Tribunal, Hyderabad passed a recovery order on 25.05.2001 for the sum of Rs.11,32,999.20 ps., together with future interest at the rate of 18% per annum without rests from the date of claim to the date of realization and also awarded costs. After passing of the recovery order, recovery proceedings were also issued in R.P.No.507/2001 in pursuance of the recovery certificate dated 25.05.2001 for the sum of Rs.32,37,175.20 ps. The recovery proceedings are in progress and the mortgaged property was notified for sale and published in the daily newspaper dated 01.04.2007. Further, it is stated that at this stage, the petitioners had filed the present writ petition claiming the mortgaged property stating that they had purchased under a sale deed dated 31.12.2004 (Document No.7926/2004). No legal or valid title can be claimed by the petitioners against the mortgaged property, which is notified for sale in RP.No.507/2001, as the said property was mortgaged to the Bank as security for the loan facilities as early as on 09.09.1998. Huge debt is

to be realized by sale of the mortgaged properties. The petitioners claim against the mortgaged properties is untenable and the bank is entitled to proceed against the mortgaged properties. The petitioners are not entitled for any notice in the proceedings initiated by the bank before the Hon'ble Debts Recovery Tribunal, Hyderabad, as their claim itself as purchasers pending disposal of the recovery proceedings before the civil Court and the Hon'ble Debts Recovery Tribunal. Hence, it is stated that there are no merits in the writ petition and the writ petition is liable to be dismissed.

7. The order made in O.A.No.298 of 1997 renumbered as O.A.No.709 of 1999 on the file of Debts Recovery Tribunal, Hyderabad dated 25.05.2001 was placed before this Court.

8. In the light of the respective stands taken by the parties, the petitioners are having alternative remedy under the provisions of the Act and the relevant rules governing the field and in view of the same, liberty is given to the petitioners to raise appropriate objections by way of a claim before the appropriate authority as per the rules governing the field. Except making this observation, no further relief can be granted in the writ petition.

9. With the above liberty, the writ petition is hereby dismissed. No order as to costs.

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P.S.NARAYANA, J

22nd November, 2007.

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